

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN LEDERMAN, claiming as widow of JAMES T. LEDERMAN and
DEPARTMENT OF STATE, OFFICE OF FOREIGN BUILDINGS, Cairo, Egypt

*Docket No. 96-2625; Submitted on the Record;
Issued September 30, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the employee's death was sustained in the performance of duty.

The employee, appellant's widow, was killed in an automobile accident on March 1, 1994 at about 5:15 p.m. He was at that time a passenger traveling from his residence to a tennis game. His regular hours of work were from 8:00 a.m. to 4:30 p.m., but he was subject to call 24 hours a day. The Office of Workers' Compensation Programs denied appellant's claim for death benefits by decision dated July 12, 1996 on the basis that the employee's fatal injury did not occur in the performance of duty.

The Board finds that the employee's death did not occur in the performance of duty.

The employee's fatal automobile accident occurred when he was traveling to a tennis game, not when he was performing any of the duties he was hired to perform. This recreational activity was not on the premises of the employing establishment during a lunch or recreational period, and there is no evidence that participation was required by the employing establishment or that the employing establishment would have derived substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation. The employee's fatal accident therefore is not covered under the Federal Employees' Compensation Act as a journey to a covered recreational activity.¹

Appellant contends that the employee's death should be covered under the Act because he was working in a foreign country and because he was subject to call 24 hours a day. The employee was not on a temporary assignment or a special mission for the employing

¹ Archie L. Ransey, 40 ECAB 1251 (1989).

establishment;² Cairo, Egypt was his regular duty station and he had fixed hours of work. Employment outside the continental United States, standing alone, is not sufficient to bring an employee within coverage of the Act 24 hours per day.³ Nor does being subject to call 24 hours a day afford 24-hour-a-day coverage under the Act.⁴ Even if it were established that the employee was in a status giving him protection of the Act on substantially a 24-hour-a-day basis, his fatal accident on March 1, 1994 still would not be covered under the Act, as it was sustained during travel for recreation, which is not considered incidental to employment.⁵

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is affirmed.

Dated, Washington, D.C.
September 30, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² An employee on a temporary assignment or special mission for his or her employer in a place different from his or her regular employment remains in the course of his or her employment 24 hours a day as long as he or she is engaged in activities essential or incidental to the special assignment. *Karl Kuykendall*, 31 ECAB 163 (1979).

³ *Eleanor Abood*, 10 ECAB 466 (1959).

⁴ *Mabel M. Adams (William C. Adams)*, 15 ECAB 8 (1963); *Esther B. Sjostadt*, 9 ECAB 100 (1958); *Sofia George Adamson*, 4 ECAB 622 (1951).

⁵ *Jose H. Pico*, 46 ECAB 750 (1995); *Marian Hannah Winter*, 1 ECAB 76 (1947).